

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HUMBERTO TINOCO, CESAR
MENDEZ, JOSE MAURICIO,
RICARDO MORALES, APOLINAR
RODRIGUEZ, and ANASTACIO
PEREZ, on behalf of themselves and all
other employees similarly situated, known
and unknown,

Plaintiffs,

v.

OCTAVIO TAPIA, individually, and
AMERICA AUTO SERVICE, INC., an
Illinois corporation,

Defendants.

No. 08 C 1365

JUDGE AMY J. ST. EVE

ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

Now Come the Defendants, OCTAVIO TAPIA, individually, and AMERICA AUTO SERVICE, INC., an Illinois corporation, by and through their attorneys, KELLY & KING, P.C. and answer the Plaintiffs' Complaint as follows:

1. The Defendants make no response to the first sentence of Paragraph 1 of Plaintiffs' Complaint as to whether the case arises under the Fair Labor Standards Act because Plaintiffs' assertion is a legal conclusion. The Defendants admit that Plaintiffs worked in excess of 40 hours per week but deny that they refused to pay Plaintiffs' time-and-a-half overtime compensation.
2. The Defendants make no response to Paragraph 2 of Plaintiffs' Complaint as it does not call for a response.

3. Defendants have insufficient knowledge as to the allegations contained in Paragraph 3 of Plaintiffs' Complaint and, therefore, demand strict proof thereof.

4. Defendants admit the allegations contained in Paragraph 4 of Plaintiffs' Complaint.

5. Defendants admit the allegations contained in Paragraph 5 of Plaintiffs' Complaint

6. Defendants admit the allegations contained in Paragraph 6 of Plaintiffs' Complaint

7. Defendants admit the allegations contained in Paragraph 7 of Plaintiffs' Complaint

8. Defendants admit the allegations contained in Paragraph 8 of Plaintiffs' Complaint

9. Defendants have insufficient knowledge as to the allegations contained in Paragraph 9 of Plaintiffs' Complaint and, therefore, demand strict proof thereof.

10. Defendants admit the allegations contained in Paragraph 10 of Plaintiffs' Complaint.

11. Defendants deny each and every allegation contained in Paragraph 11 of Plaintiffs' Complaint.

12. Defendants have insufficient knowledge as to the allegations contained in Paragraph 12 of Plaintiffs' Complaint and, therefore, demand strict proof thereof.

13. Defendants deny joint and several liability but admit the remaining portions of Paragraph 13 of Plaintiffs' Complaint.

14. Defendants admit that the employment dates set forth in Paragraph 14 of Plaintiffs' Complaint are approximately correct but deny that all of the beginning and ending dates are exactly correct.

15. Defendants admit the allegations contained in Paragraph 15 of Plaintiffs' Complaint.

16. Defendants have insufficient knowledge as to the allegations contained in Paragraph 16 of Plaintiffs' Complaint and, therefore, demand strict proof thereof.

17. Defendants admit the allegations contained in Paragraph 17 of Plaintiffs' Complaint

18. Defendants deny they refused to pay Plaintiffs' overtime but admit the remaining portions of Paragraph 18 of Plaintiffs' Complaint.

Count I

(Violation of FLSA)

19. Defendants repeat and reallege their answers to Paragraphs 1 - 18 above as though each were fully set forth herein.

20. Defendants deny each and every allegation contained in Paragraph 20 of Plaintiffs' Complaint.

21. Defendants deny each and every allegation contained in Paragraph 21 of Plaintiffs' Complaint.

Wherefore, Defendants pray for Judgment in their favor and against the Plaintiffs.

Count II

(Violation of the IMWL)

22. Defendants repeat and reallege their answers to Paragraphs 1 - 18 above as though each were fully set forth herein.

23. Defendants deny each and every allegation contained in Paragraph 23 of Plaintiffs' Complaint.

24. Defendants deny each and every allegation contained in Paragraph 24 of Plaintiffs' Complaint.

Wherefore, Defendants pray for Judgment in their favor and against the Plaintiffs.

Count III

(Violation of the IWPCA/AFWAA Claim)

25. Defendants repeat and reallege their answers to Paragraphs 1 - 18 above as though each were fully set forth herein.

26. Defendants deny each and every allegation contained in Paragraph 26 of Plaintiffs' Complaint.

27. Defendants deny each and every allegation contained in Paragraph 27 of Plaintiffs' Complaint.

28. Defendants deny each and every allegation contained in Paragraph 28 of Plaintiffs' Complaint.

Wherefore, Defendants pray for Judgment in their favor and against the Plaintiffs.

AFFIRMATIVE DEFENSES

For their affirmative defenses to Plaintiffs' Complaint at Law, Defendants state as follows:

1. The Plaintiffs suffered no damages because their weekly wages exceeded the minimum wage for the first 40 hours of work plus 1.5 times the minimum wage for hours in excess of that.
2. The Defendants at all times acted in good faith towards the Plaintiffs and with the belief that they were in compliance with the law.
3. The Plaintiffs have no right to seek and recover under any of the Acts cited by Plaintiffs in their Complaint because one or more of them are illegal aliens.

Wherefore, Defendants pray for Judgment in their favor and against the Plaintiffs.

s/ Paul E. Kelly

One of the Attorneys for Defendants,
OCTAVIO TAPIA and AMERICA
AUTO SERVICE, INC.

Paul E. Kelly - Attorney No. 1437356
KELLY & KING, P.C.
20 North Clark Street, Suite 2900
Chicago, Illinois 60602
312-553-5290

PROOF OF SERVICE

I, Paul E. Kelly, attorney for Defendants herein, certify that I have served a copy of the foregoing **ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES** to:

Roy P. Amatore
Paul Luka
AMATORE & ASSOCIATES, P.C.
120 S. State Street, Suite 400
Chicago, IL 60603

electronically on May 12, 2008 at or before 5:00 p.m.

s/ Paul E. Kelly_____